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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 BRANDY L. ANDERSON, ) NO. ED CV 17-1063-E  
12 Plaintiff, )  
13 v. ) MEMORANDUM OPINION  
14 NANCY A. BERRYHILL, Acting ) AND ORDER OF REMAND  
15 Commissioner of Social Security, )  
16 Defendant. )  
17

18 Pursuant to sentence four of 42 U.S.C. section 405(g), IT IS  
19 HEREBY ORDERED that Plaintiff's and Defendant's motions for summary  
20 judgment are denied, and this matter is remanded for further  
21 administrative action consistent with this Opinion.  
22

23 PROCEEDINGS  
24

25 Plaintiff filed a complaint on May 26, 2017, seeking review of  
26 the Commissioner's denial of benefits. The parties consented to  
27 proceed before a United States Magistrate Judge on June 27, 2017.  
28 Plaintiff filed a motion for summary judgment on December 18, 2017.

1 Defendant filed a motion for summary judgment on January 17, 2018.  
2 The Court has taken the motions under submission without oral  
3 argument. See L.R. 7-15; "Order," filed June 5, 2017.

#### 4 5 **BACKGROUND**

6  
7 Plaintiff asserts disability since October 1, 2011, based on  
8 alleged physical and psychological impairments (Administrative Record  
9 ("A.R.") 16-741). The Administrative Law Judge ("ALJ") found  
10 Plaintiff suffers from several severe impairments, including  
11 "generalized anxiety disorder" and "depression" (A.R. 18).

12  
13 In assessing Plaintiff's residual functional capacity, the ALJ  
14 purportedly gave "great weight" to the opinions of Dr. Roger Tilton, a  
15 consultative examining psychologist (A.R. 26, 364-69). In one of  
16 those opinions, Dr. Tilton stated that Plaintiff's "ability to perform  
17 work activities without special or additional supervision is judged to  
18 be moderately limited" (A.R. 369). Yet, the ALJ defined a light work  
19 residual functional capacity for Plaintiff that does not appear to  
20 acknowledge any need for "special or additional supervision" (A.R.  
21 21). The only arguable psychologically-based limitation in the  
22 residual functional capacity defined by the ALJ is the limitation  
23 "to unskilled work with occasional contact with the public" (id.).

24  
25 In response to a hypothetical question assuming this residual  
26 functional capacity, a vocational expert identified jobs a person so  
27 limited assertedly could perform (A.R. 59-60). In reliance on this  
28 testimony, the ALJ found Plaintiff not disabled (A.R. 28-29). The

1 Appeals Council denied review (A.R. 1-3).

## 3 STANDARD OF REVIEW

5 Under 42 U.S.C. section 405(g), this Court reviews the  
6 Administration's decision to determine if: (1) the Administration's  
7 findings are supported by substantial evidence; and (2) the  
8 Administration used correct legal standards. See Carmickle v.  
9 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,  
10 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner  
11 of Social Sec. Admin., 682 F.3d 1157, 1161 (9th Cir. 2012).  
12 Substantial evidence is "such relevant evidence as a reasonable mind  
13 might accept as adequate to support a conclusion." Richardson v.  
14 Perales, 402 U.S. 389, 401 (1971) (citation and quotations omitted);  
15 see Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

## 17 DISCUSSION

19 Plaintiff argues, inter alia, that the ALJ erred by failing to  
20 account for Dr. Tilton's opinion that Plaintiff is moderately limited  
21 in the ability to perform work activities without special or  
22 additional supervision. Defendant argues that the ALJ's limitation of  
23 Plaintiff to "unskilled work with occasional contact with the public"  
24 properly accounted for Dr. Tilton's supervision-related opinion.

26 Contrary to Defendant's argument, a limitation to unskilled work  
27 does not account for a need for special or additional supervision.  
28 The recent decision of Jaquez v. Berryhill, 2017 WL 5989197 (D.N.M.

1 Dec. 1, 2017) ("Jaquez") is instructive. There, doctors opined that  
2 the claimant was moderately limited in the ability to sustain an  
3 ordinary routine without special supervision. Id. at \*5. Defendant  
4 argued that such limitation "is adequately accounted for in the ALJ's  
5 'limiting Plaintiff to simple instructions and [simple] work-related  
6 decisions. . . .'" Id. In rejecting this argument, the Jaquez Court  
7 observed that the Social Security Administration's Program Operations  
8 Manual Systems states that one of the mental abilities "critical" for  
9 performing unskilled work is the ability to "sustain an ordinary  
10 routine without special supervision." Id. The Jaquez Court concluded  
11 that "[i]t was reversible error for the ALJ to purportedly adopt the  
12 doctors' [supervision-related] opinions while assessing an RFC  
13 [residual functional capacity] that conflicted with them" (id.).  
14 Other district courts are in accord with the Jaquez decision. See  
15 Davis v. Colvin, 2014 WL 3890495, at \*13 (W.D. Va. Aug. 7, 2014) ("a  
16 restriction to simple unskilled work does not address a limitation  
17 that [the claimant] requires additional supervision and instruction  
18 . . ."); Gonzales v. Astrue, 2010 WL 4392911, at \*13 (E.D. Cal.  
19 Oct. 29, 2010) (ALJ's limitation of the claimant to unskilled work  
20 failed to account for the claimant's alleged need for additional  
21 supervision).

22  
23 Thus, if (as it appears) the ALJ accepted Dr. Tilton's opinion  
24 regarding a limitation on Plaintiff's ability to perform work  
25 activities without special or additional supervision, then the ALJ  
26 erred by failing without explanation to account for this limitation in  
27 the residual functional capacity assessment and the hypothetical  
28 questioning of the vocational expert. See id. Such errors may have

1 been material. Where a hypothetical question fails to include all of  
2 the claimant's limitations, the vocational expert's answer to the  
3 question cannot constitute substantial evidence to support the ALJ's  
4 decision. See, e.g., DeLorme v. Sullivan, 924 F.2d 841, 850 (9th Cir.  
5 1991); Gamer v. Secretary, 815 F.2d 1275, 1280 (9th Cir. 1987);  
6 Gallant v. Heckler, 753 F.2d 1450, 1456 (9th Cir. 1984); cf. Molina v.  
7 Astrue, 674 F.3d 1104, 1115 (9th Cir. 2012) (an ALJ's error is  
8 harmless only where the error is "inconsequential to the ultimate  
9 nondisability determination").

10  
11 Remand is appropriate because the circumstances of this case  
12 suggest that further administrative review could remedy the ALJ's  
13 errors. See McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011); see  
14 also INS v. Ventura, 537 U.S. 12, 16 (2002) (upon reversal of an  
15 administrative determination, the proper course is remand for  
16 additional agency investigation or explanation, except in rare  
17 circumstances); Dominquez v. Colvin, 808 F.3d 403, 407 (9th Cir. 2015)  
18 ("Unless the district court concludes that further administrative  
19 proceedings would serve no useful purpose, it may not remand with a  
20 direction to provide benefits"); Treichler v. Commissioner, 775 F.3d  
21 1090, 1101 n.5 (9th Cir. 2014) (remand for further administrative  
22 proceedings is the proper remedy "in all but the rarest cases");  
23 Garrison v. Colvin, 759 F.3d 995, 1020 (9th Cir. 2014) (court will  
24 credit-as-true medical opinion evidence only where, inter alia, "the  
25 record has been fully developed and further administrative proceedings  
26 would serve no useful purpose"); Harman v. Apfel, 211 F.3d 1172, 1180-  
27 81 (9th Cir.), cert. denied, 531 U.S. 1038 (2000) (remand for further  
28 proceedings rather than for the immediate payment of benefits is

1 appropriate where, as here, there are "sufficient unanswered questions  
2 in the record"). There remain significant unanswered questions in the  
3 present record.

4  
5 **CONCLUSION**  
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7 For all of the foregoing reasons,<sup>1</sup> Plaintiff's and Defendant's  
8 motions for summary judgment are denied and this matter is remanded  
9 for further administrative action consistent with this Opinion.

10  
11 LET JUDGMENT BE ENTERED ACCORDINGLY.  
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13 DATED: January 23, 2018.  
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15  
16 /s/  
CHARLES F. EICK  
UNITED STATES MAGISTRATE JUDGE  
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25 <sup>1</sup> The Court has not reached any other issue raised by  
26 Plaintiff except insofar as to determine that reversal with a  
27 directive for the immediate payment of benefits would not be  
28 appropriate at this time. "[E]valuation of the record as a whole  
creates serious doubt that [Plaintiff] is in fact disabled."  
See Garrison v. Colvin, 759 F.3d at 1021.